

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO. 121 OF 2006

General Arun Kumar Vaidyan Nagar Rahiwasi Sangh & Anr. ...

Petitioners

Versus

The State of Maharashtra and others

...Respondents

Mr. E.P. Bharucha, Senior Advocate, with Mr. I.S. Mecwan, instructed by Mr. M.G. Gawde for the petitioners.

Mr. G.W. Mattos, Assistant Government Pleader, for respondent Nos. 1 to 6.

Ms. Shobha Ajitkumar for respondent No.7.

Mr. Abhijit Wagh, instructed by M/s. Uttangale & Company, for respondent No.8.

Mr. R.V. Govilkar for respondent No. 10.

CORAM: **H.L. GOKHALE, Ag. C.J., &**
V.M. KANADE, J.

DATE: **FEBRUARY 15, 2007.**

P.C.

Heard Mr. Bharucha, Senior Advocate, appearing for the petitioners. Mr. Mattos, Assistant Government Pleader, appears for respondent Nos. 1 to 6. Ms. Shobha Ajitkumar appears for respondent

No.5. Mr. Wagh appears for respondent No.8. Mr. Govilkar appears for respondent No. 10.

2. This petition is filed by an Association of Co-operative Housing Societies situated at Bandra Reclamation on General Arunkumar Vaidya Marg, Bandra (West), Mumbai. In prayer clause (a), the petitioners pray that respondent Nos. 1 to 6 be directed to desist from implementing the Valmiki Ambedkar Awas Yojana (VAMBAY) Scheme or any other scheme under the Slum Act and/or the Development Control Regulation 33 (10) of the D.C. Regulation,1991. The further prayer is to direct the respondents to remove the structures built under that scheme.

3. What is important to be noted is that this is a scheme for housing the weaker sections of the society wherein the Central and the State Governments make equal contribution. There is no private developer and the constructions are all ground floor structures of the minimum permissible size. The case of the petitioners is that the particular scheme is coming on a plot which was initially reserved for a convention complex and the same is now being changed. Alternatively it is submitted that if the scheme is meant for accommodating those who

were prior to 1995, the assertion of the respondents is factually not correct. On behalf of the respondents, reliance is placed on the notification dated 24th October, 2002, issued by the MMRDA for modification under the Maharashtra Regional and Town Planning Act, 1955 ("the Act"), of the concerned parcel of land. Objections were invited by invoking Section 37 of the Act for necessary modifications for change of user from the convention centre to a commercial complex. Section 37 of the Act provides for modification of the final development plan. Mr. Bharucha asserted that in the earlier affidavits filed by MHADA it was stated that in 1993-94 also, efforts were made by the public authorities to remove the hutments. It can be seen from the affidavit of one Suresh K. Bhatt, Deputy Engineer of the Housing-Bandra Division, that in May, 1993, 884 hutments were demolished. However, it is stated that those hutments came back. As claimed by the hutment dwellers, they were there prior to 1995. This affidavit was filed in Writ Petition No. 17 of 1994. In any case, as far as the modification is concerned, Section 46 of the Act permits and requires the planning authority to have due regard to the provisions of any draft or final development or proposal published by means of notice. This provision has been interpreted in the case of *S.N. Rao and others vs. State of Maharashtra and others*, reported in AIR 1988 SC 712, wherein

it has been laid down that even a proposal which is not final can be acted upon by the Commissioner.

4. In the present case, what is being constructed are the houses under a scheme for the weaker sections as well as transit accommodation. There were objections filed earlier by the persons interested and this Court has consistently passed orders from time to time rejecting the same. In the circumstances, we are not inclined to entertain the petition. However, we note the grievance made by the petitioners that on the one hand the pre-1995 hutment dwellers are being accommodated and on the other hand there is a continuous encroachment on the roads and it is difficult for the passers by and the motorists to travel through this area. There is merit in the submission of the petitioners to that limited extent and the authorities concerned must take necessary steps to see to it that the roads are not blocked and are not encroached upon.

5. The petition is accordingly disposed of.

ACTING CHIEF JUSTICE

V.M. KANADE, J.